



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 7, 2019

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

On December 5, 2017, you and United States Senators Robert Menendez, Richard Blumenthal, Tammy Baldwin, Catherine Cortez Masto, Richard J. Durbin, and Bernard Sanders requested that our office conduct an investigation to determine how Bronze Star LLC (Bronze Star) won Federal Emergency Management Agency's (FEMA) tarp and plastic sheeting contracts. You also asked us to determine whether all relevant procurement laws, regulations, and procedures were followed in FEMA's decision to award the contracts. As we communicated to you at the time, in response to your request, the Office of Inspector General (OIG) initiated a review of the circumstances surrounding FEMA's award of the contracts. Today I am enclosing OIG's final report, "FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC."

To answer your overall request and specific questions, we interviewed officials in FEMA's Office of Chief Procurement Officer, Office of Chief Counsel, and Office of Financial Officer, as well as individuals directly responsible for the Bronze Star contract awards. We also obtained and reviewed public laws, DHS directives, FEMA acquisition policies and procedures, contract documents, and contract payment records.

We used the Federal Procurement Data System to identify contracts awarded by FEMA for Hurricane Maria supplies. We also reviewed de-obligations to confirm any contracts terminated by FEMA. However, we did not materially rely on the data from this system to support our answers to your questions.



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Please find our response to your seven questions below.

- (1) What was the process by which Bronze Star was awarded the FEMA contracts?

According to our review of the contract files and our interviews with FEMA officials, FEMA contracting and logistics officials at the National Response Coordination Center received the initial request for tarps and plastic sheeting. They performed market research to determine the market availability of the required resources, historical costs, current market price, and potential suppliers. Once FEMA completed the market research, it developed solicitations for both the tarps and plastic sheeting. After FEMA's Office of Chief Counsel reviewed the solicitations, FEMA publicized them on the Federal Business Opportunities website to allow potential contractors an opportunity to submit proposals. FEMA also advertised amended solicitations on the website. As FEMA received the proposals, it evaluated them against the statement of work and product specifications in each solicitation and identified each proposal as technically acceptable or unacceptable.

FEMA contracting officials reviewed those proposals deemed technically acceptable for past performance and price. FEMA selected the lowest price, technically acceptable proposal — Bronze Star for both solicitations — and performed a review of the contractor's responsibility. FEMA deemed Bronze Star a responsible contractor and awarded it a \$21.2 million contract for 475,000 tarps and a \$9.2 million contract for 60,000 units of plastic sheeting.

- (2) What steps did FEMA take to determine whether Bronze Star was capable of fulfilling the contracts it was issued on October 5th and October 10th? What findings did FEMA make regarding the company's track record, its infrastructure, its inventory and production processes, and its financial capabilities?

From our review of the contract files and interviews with FEMA officials, we determined FEMA completed a desk review, using Department of Homeland Security (DHS) Form 700-12, to determine whether Bronze Star met the standards of a responsible contractor. The desk review included a review of the company's track record, infrastructure, inventory and production processes, and financial capabilities. However, during the review, FEMA's



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contracting officer only reviewed records from the System for Award Management, the Federal Awardee Performance and Integrity Information System, and the Past Performance Information Retrieval System. The review found no records on past performance or exclusions for awards of Federal contracts. The FEMA contracting officer did not request or review any other records from Bronze Star, such as letters of commitment from suppliers, Dun & Bradstreet reports, or financial statements. However, when FEMA re-awarded the tarps contract to Master Group USA LLC (Master Group), the contracting officer required letters of commitment from Master Group's suppliers. The contract specialist also contacted those suppliers to verify Master Group's ability to meet the terms and conditions of the contract.

- (3) What steps did FEMA take to determine whether the other companies bidding on the contracts were capable of fulfilling them? Why did FEMA choose Bronze Star over these other companies? If—as FEMA has told the media—the “potential contractors are objectively evaluated, and a contract is awarded based on the highest-rated submission,” what were the objective criteria, the technical evaluations of each bidder, and the ratings of each bidder?

Based on a review of the Bronze Star contract files, FEMA evaluated the proposals received for the tarps and plastic sheeting solicitations in four separate phases:

- Technical Evaluation Phase – During this phase, FEMA determined whether proposals met the product specifications and terms included in the statement of work. Each proposal received a determination of technically acceptable or unacceptable.
- Past Performance Review Phase – FEMA reviewed those proposals deemed “technically acceptable” during the Technical Evaluation Phase to ensure the potential contractor had no adverse history in executing Federal contracts. FEMA assigned potential contractors a past performance rating of acceptable, unacceptable, or neutral.
- Price Analysis Phase – FEMA reviewed all proposals deemed “technically acceptable” with a neutral or acceptable past performance rating to determine which bid represented the best value to the government.
- Determination of Responsibility Phase – FEMA performed a desk review of the bid selected during the Price Analysis Phase



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as the best value to the government to determine whether the potential contract awardee was a responsible contractor.

Tarps – Bronze Star and Master Group USA LLC were the only proposals deemed “technically acceptable” that received consideration under the tarps solicitation. The contracting officer determined that Bronze Star’s pricing represented the best value to the government.

Plastic Sheeting – Bronze Star and Oil Housing were the only proposals deemed “technically acceptable” that received consideration under the plastic sheeting solicitation. However, FEMA eliminated Oil Housing from consideration for failing to submit a revision to their original proposal. Subsequently, FEMA deemed Bronze Star’s proposal as the only technically acceptable plastic sheeting proposal.

(4) Did FEMA follow all relevant laws, regulations, and procedures in awarding Bronze Star its contracts?

We reviewed contract files, interviewed FEMA acquisition officials, and reviewed applicable laws, regulations, and procedures. We found FEMA did not follow all relevant laws, regulations, and procedures when awarding the two Bronze Star contracts. Specifically, contrary to Federal Acquisition Regulation (FAR) 9.103, 9.104, and 15.305, FEMA did not determine Bronze Star’s capability or the capability of its supplier to fulfill the terms and conditions of the contracts. FEMA did not request acceptable evidence of a commitment or explicit arrangement from Bronze Star’s supplier or require Bronze Star to “affirmatively” demonstrate its responsibility or that of its proposed supplier.¹

Additionally, FEMA included an incorrect FAR clause in the solicitations and significantly amended one solicitation without allowing sufficient time for potential contractors to submit new or revised proposals. FEMA incorrectly included the Buy American – Supplies clause in the tarp and plastic sheeting solicitations. It then amended the tarp solicitation to include the Trade Agreements clause, only providing five hours for potential contractors to submit new or revised bids. The plastic sheeting solicitation closed, even though it contained the incorrect clause. Despite this problem, FEMA did not reissue the solicitation to

¹ FAR 9.103(c).



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include the correct Trade Agreements clause, which would have given potential contractors the opportunity to submit new or revised proposals (FAR 15.203 and 15.206). Instead, it simply included this clause in the contract it awarded to Bronze Star.

Finally, FEMA does not have policies or procedures in place to consult the Disaster Response Registry when conducting market research. FAR 7.103(y) requires the agency to prescribe procedures for ensuring the contracting officer consults the Disaster Response Registry for procurements of disaster or emergency relief activities. FEMA procurement personnel did not know the registry existed or that a requirement existed to consult the registry during market research.

- (5) Did FEMA recover all funds paid to Bronze Star under the contracts that were canceled?

Based on documentation from FEMA, no payments were made to Bronze Star for either the tarps or the plastic sheeting contracts; therefore, there were no funds to recover. Additionally, Bronze Star signed a release, removing all liability from the government and releasing any claims for compensation.

- (6) Has FEMA canceled other contracts for supplies to Puerto Rico, including but not limited to tarps and plastic sheeting, due to a contractor's inability to fulfill the contract?

Documentation provided by FEMA during our audit revealed that FEMA terminated 19 contracts for cause, convenience, or legal contract cancellation;² however, we did not review the files associated with these contracts, and thus could not determine whether FEMA terminated them due to the contractor's inability to fulfill the contract.

- (7) What steps has FEMA taken in the wake of the Bronze Star terminations to analyze and improve its contracting processes?

FEMA completed a 2017 hurricane season after-action report; however, FEMA has not improved its contracting processes in the wake of the Bronze Star terminations. According to a FEMA Office

² Termination for cause, convenience, or legal contract cancellation are the three categories that the Federal Procurement Data System used to characterize reasons for contract cancellations.



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of Chief Procurement Officer official, FEMA is awaiting the results of ongoing Government Accountability Office and DHS OIG audits before updating or changing its contracting processes.

We have provided identical information to your co-requestors. Should you have any questions about the enclosed, please contact me, or your staff may contact Faiza Mathon-Mathieu, Legislative Counsel, Office of External Affairs at (202) 981-6000.

Sincerely,

John V. Kelly
Acting Inspector General

Enclosure

cc: The Honorable Robert Menendez
The Honorable Richard Blumenthal
The Honorable Tammy Baldwin
The Honorable Catherine Cortez Masto
The Honorable Richard J. Durbin
The Honorable Bernard Sanders